

1 MR. ALBERTSON: No, sir.

2 COURT: Very well. Those will be corrected
3 for the record. That has been done, counsel. Are all
4 jury panel members present?

5 BAILIFF: Yes, sir.

6 COURT: Mr. Albertson, you wanted to make a
7 motion I know after the close of Commonwealth's evidence.

8 MR. ALBERTSON: Yes, sir. Judge, Mr.
9 Graves will be making the motion to strike. I believe
10 Ms. Garst wouldn't object if I have the opportunity to
11 augment if needed.

12 COURT: All right.

13 MR. ALBERTSON: In addition I did want to
14 put on the record that I've discussed with my client her
15 Fifth Amendment right against self-incrimination and her
16 right not to take the stand. And I think she fully
17 understands her rights as to that and so we'll proceed to
18 the motion to strike.

19 COURT: All right. Mr. Graves.

20 MR. GRAVES: Good morning, Your Honor.

21 COURT: Good morning.

22 *Motion* MR. GRAVES: The defense would now make a
23 motion to strike Indictment 1, the charge of first degree
24 murder. For the defendant to be found guilty of first
25 degree murder the Commonwealth must have proven the

1 elements of willfulness, deliberated and premeditation of
2 the killing of Dustin Stanley. The Commonwealth has
3 introduced evidence of Ms. Hockman purchasing a firearm
4 coincidentally the day before, she also purchased pepper
5 spray, and also showed intent to purchase a tazer gun
6 which is a nonlegal defense weapon. The Commonwealth's
7 own witnesses have testified that she was in fear and she
8 wanted to be able to shoot to defend herself or others
9 that she felt were threatened. The Commonwealth bases
10 much of its evidence towards the premeditation element on
11 the testimony of close friends of the victim and
12 jailhouse snitches who some by their own admission in a
13 letter, at least one, asked if coming forward would help
14 them out. The Commonwealth's own witnesses have
15 testified as to her frantic attempts to clean the scene.
16 Such testimony helps dissect any ideas of premeditation
17 on the part of Ms. Hockman and at best could be argued as
18 her state of shock after shooting him. She questioned
19 and quizzed others to find out what to do on the phone.
20 The mere fact that she had no plan to clean up the scene
21 or dispose of the body demonstrates she had a lack of
22 willful, premeditated and deliberated intent. The
23 Commonwealth has presented such evidence and therefore
24 the Commonwealth cannot rise about its own evidence. It
25 is coincidental that the events that caused Ms. Hockman

1 to use deadly force occurred the day after purchasing and
2 practicing with her new gun. While premeditation can
3 occur in the blink of an eye it was during that blink of
4 an eye that the Court must view Ms. Hockman's state of
5 mind at the time she fired the gun. The Commonwealth has
6 also introduced evidence suggesting possibly some type of
7 struggle may have occurred that morning. That sets up
8 the possibility the shooting had occurred during the heat
9 of passion. If so there can be no malice inferred as
10 malice and the heat of passion are mutually exclusive.
11 Malice excludes passion and passion presupposes the
12 absence of malice. Because the Commonwealth has been
13 able to offer circumstantial evidence only they have only
14 proven their case for at best voluntary manslaughter. As
15 to Indictment #2 the motion to strike for use of a
16 firearm during the commission of a murder as she did not
17 act in the heat of passion. She was acting in self-
18 defense and this indictment should also be struck. By
19 looking at the evidence presented by the Commonwealth it
20 is clear that Mr. Stanley and Ms. Hockman had a volatile
21 relationship, one that had many days of good and many
22 days of extreme outbursts and violence. The
23 Commonwealth's own evidence supports a theory of a
24 confrontation that morning, a fight, and a reaction of
25 violence. While we feel that there is insufficient